

October 27, 2004

PUBLIC UTILITIES COMMISSION
Amendment to Requirement for
Medium and Large Customer Disclosure
Label Distribution (Chapter 306)

NOTICE OF RULEMAKING

WELCH, Chairman; DIAMOND and REISHUS, Commissioners

I. SUMMARY

Through this Notice, we initiate a rulemaking to amend provisions of our uniform information disclosure rule (Chapter 306) to remove the requirement for competitive electricity providers (CEP) to distribute annual customer information disclosures to medium and large customers. This rulemaking is in response to recent legislation that eliminated the statutory requirement for CEPs to distribute customer information disclosures to medium and large customers at least once annually.

II. BACKGROUND

The original Electric Restructuring Act contained a provision that required the Commission to establish by rule information disclosure requirements to enhance the ability of consumers to effectively make choices in the competitive electricity market. 35-A M.R.S.A. § 3203(3). The Legislature designated these rules as major substantive as defined in Title 5, chapter 375. The Commission responded by adopting Chapter 306 of its rules, which requires CEPs to make available to customers specific information in a uniform format (referred to as labels). *Order Provisionally Adopting Rule*, Docket No. 98-708 (Feb 23, 1999). The rule as provisionally adopted required CEPs to distribute labels to residential and small commercial customers at regular intervals, but mandated the provision of labels to medium and large customers only upon request. The Legislature subsequently approved the rule. Resolves 1999, ch. 34.

The Legislature then amended the Restructuring Act to add a list of generally applicable consumer protection provisions. P.L. 1999, Ch. 657, § 19 (codified at 35-A M.R.S.A. § 3203 (4-A)). Among those provisions was a requirement that CEPs provide to all customers information disclosures at least once annually, 35-A M.R.S.A. § 3203 (4-A)(G). Accordingly, the Commission amended Chapter 306 to require CEPs to provide information disclosure labels to medium and large customers once each year.¹ *Order Provisionally Adopting Rule*, Docket No. 2002-580 (Feb. 13, 2003).²

¹ The requirement that CEPs provide information labels to residential and small commercial customers four times a year was unchanged.

During its last session, the Legislature enacted An Act to Amend the Laws Relating to Requirements for Competitive Electricity Providers. P.L. 2003, ch. 558 (Act). The Act repealed 35-A M.R.S.A. § 3203(4-A)(G), which required CEPs to distribute customer information disclosures to all customers at least once annually, and added a new provision, 35-A M.R.S.A. § 3203(4)(G), which makes the information disclosure requirement applicable only to residential and small commercial customers. P.L. 2003, ch. 558, §§ 3 and 5. The purpose of these statutory amendments was to remove the requirement that CEPs distribute information disclosure labels to medium and large customers every year.

III. PROPOSED AMENDMENTS

A. Applicability (Section 2(A)(3))

The current rule is applicable to all CEPs and specifically requires the provision of disclosure labels to medium and large customers once a year. Because larger customers are sophisticated enough to request product information that they desire, the requirement for an annual information disclosure to these customers is an unnecessary burden CEPs. Accordingly, we have added an “applicability” provision that states that the disclosure label requirements only apply to residential and small commercial customers. The provision specifies that comparable information shall be provided to medium and large customers upon request.

B. Distribution of Disclosure Label (Section 2(E))

Section 2 (E) of the current rule explicitly states that CEPs shall provide a disclosure label to medium and large customers at least once annually. For the reasons discussed above, we propose to eliminate this language.

IV. RULEMAKING PROCEDURES

This rulemaking will be conducted according to the procedures set forth in 5 M.R.S.A. §§ 8051-8058 and is a major substantive rulemaking pursuant to Title 5, Chapter 375, Subchapter II-A. No public hearing on this matter has been scheduled. The Commission will schedule a public hearing if requested by five or more interested persons. Written comments on the proposed Rule may be filed with the Administrative Director until December 13, 2004. Written comments should refer to the docket number of this proceeding, Docket No. 2004-728 and be sent to the Administrative Director, Public Utilities Commission, 242 State Street, 18 State House Station, Augusta, Maine 04333-0018.

² The Legislature subsequently approved the provisional rule, Resolves 2003, ch. 46.

In accordance with 5 M.R.S.A § 8057-A(1), the fiscal impact of the proposed rule is expected to be minimal. The Commission invites all interested parties to comment on the fiscal impact and all other implications of the proposed rule.

Accordingly, we

ORDER

1. That the Administrative Director shall notify the following of this rulemaking proceeding:

- a. All electric utilities in the state;
- b. All persons who have filed with the Commission within the past year a written request for Notice of rulemaking;
- c. All licensed competitive electricity providers; and

2. That the Administrative Director shall send copies of this Notice of Rulemaking and the attached proposed rule to:

- a. The Secretary of State for publication in accordance with 5 M.R.S.A. § 8053(5); and
- b. Executive Director of the Legislative Council, 115 State House Station, Augusta, Maine 04333-0115 (20 copies).

Dated at Augusta, Maine, and this 27th day of October , 2004.

BY ORDER OF THE COMMISSION

Dennis L. Keschl
Administrative Director

COMMISSIONERS VOTING FOR: Welch
 Diamond
 Reishus